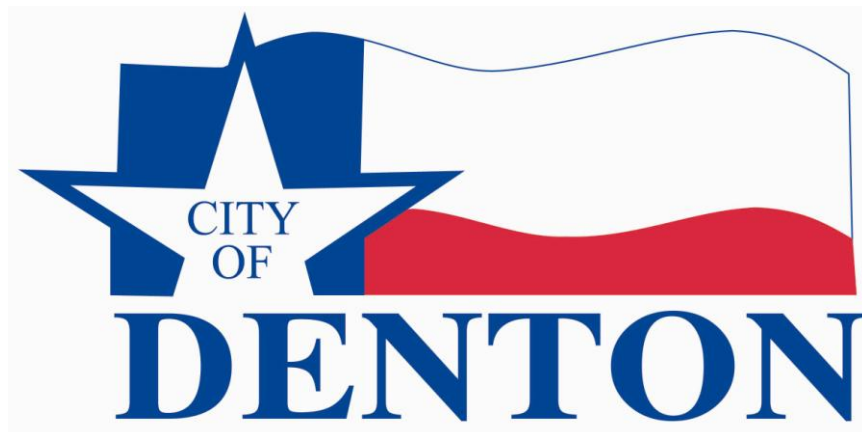




**The City of Denton
Procurement Department
901B Texas Street
Denton, Texas 76209**

REQUEST FOR PROPOSALS (RFP) 4672

**COMPREHENSIVE PLAN UPDATE
FOR THE CITY OF DENTON**

NIGP CLASS and ITEM

918	27
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**Issue Date: April 25th, 2011
Response due Date and Time (CST):
Monday, June 06th, 2011, 2:00 p.m.**

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NOTICE TO VENDORS - RFP # 4672

Request for Proposals addressed to the City of Denton, Purchasing Department, 901-B Texas Street, Denton, TX 76209 will be received until **2:00 P.M., Monday, June 6, 2011**, for the design/build services per proposal instructions and specifications:

Request For Proposal (RFP) # 4659 – COMPREHENSIVE PLAN UPDATE FOR THE CITY OF DENTON

The proposals will be officially ranked by the criteria as set forth in the RFQ documents. Qualified firms will then submit proposals for the most qualified for the proposed Comprehensive Plan. **Only qualified offerors from RFP 4672 may submit a Request for Proposals (RFP) for cost consideration.** Information may be obtained at the Purchasing Department, located at 901-B Texas Street, Denton, Texas, 76209 at the Service Center Complex. RFP's will be received at the Purchasing Department until **2:00 P.M., Monday, June 6, 2011**. Negotiations may be held with the highest ranked offeror.

Solicitation Schedule: Issue RFP	4/26/2011
Pre-Submittal Conference:	5/11/2011 @ 10:00 AM CST
Deadline for Submission of RFP (Qualifications)	3/17/2011 Thurs @ 2:00 PM

A pre-submittal conference is scheduled for Wednesday, 5/11/2011 @ 10:00 AM. The pre-submittal conference is at the 901A Texas Street – Service Center Conference Room, Denton, Texas. Please allow ample time for parking. Respondents must have an employee of their firm attend the mandatory pre-submittal conference. **The City of Denton shall reject qualifications submitted by firms that did not attend the mandatory pre-submittal conference.**

The submitted proposal shall not be altered, withdrawn, or resubmitted within sixty (60) days from and after the date of the proposal opening.

Proposals received later than the specified time (2:00 P.M.) and dates will be returned to the offeror unopened.

CITY OF DENTON
Purchasing Department
901-B Texas Street
Denton, TX 76209
Elton Brock
Purchasing Manager

This advertisement to run: **May 5 and May 23, 2011**

Section I General

1. INTRODUCTION

In accordance with the provisions of Texas Local Government Code, Chapter 252, The City of Denton (the City) is requesting proposals to contract with a qualified team of professionals (the Firm) with considerable experience in citizen involvement, citizen participation, planning, land use, and sustainability, to develop an update to the City's Comprehensive Plan, *the Denton Plan* (Plan). The proposals and the cost solutions shall be submitted to the City of Denton in a sealed submission, in accordance with Texas Local Government Code 252.0415 and 252.042.

The selected Firm will be comprised of a multidisciplinary consulting team, including, but not limited to, Planners, Design Professionals, Engineers and Information Technology professionals, with a proven track record of using innovative approaches to deliver products that represent the values and that capture the future vision of their clients. The consultant(s) chosen for this project will be expected to utilize existing resources, including the Denton Plan, to identify and target areas for updating, and provide a product that marries Plan updates with new material reflected in other plans/initiatives (e.g. Sustainability Plan, Mobility Plan) to result in a comprehensive plan that is valuable, dynamic and relevant.

It is anticipated that the updated Plan may include, by way of example, the following Elements: Vibrant Communities, Community Services, Public Utilities and Infrastructure, Environmental Management and Sustainability, Economic Vitality, Regional Influences, and Implementation. Although these elements have been identified as desirable and appropriate by staff, refining of the final elements will be ultimately determined through the Scope of Services, as outlined below.

The selected Firm should consist of the necessary staff or teams able to accomplish all aspects of the project. The selected Firm should focus on ensuring the updated Plan represents innovative ways to deal with municipal challenges, and should approach the project with the understanding that an effective plan must consider the integrated nature of municipal decision making.

The City of Denton is exempt from Federal Excise and State Sales Tax.

COMMUNITY PROFILE

Denton, Texas is a Main Street City in the North Texas region. Established in 1857, Denton is the county seat of Denton County and was named for John B. Denton. Denton is unique in composition; the city is comprised of over 92 square miles which radiate out in all directions from the downtown core. In addition to the unique physical composition of the city, there is a unique character to the City. It is comprised of a diversity of neighborhoods and land uses that range from historical residential and commercial districts to new residential subdivisions and industrial complexes to greenbelt areas and newly annexed rural areas. There are several active industries operating within the City limits, including highly disputed gas well drilling, production, and transmission. Denton is home to two state universities, the University of North Texas, and Texas Woman's University, and two regional hospitals. The City is traversed by

state highways, rail lines, and Interstate 35 E & W. This summer Denton County Transportation Authority (DCTA) will begin operation of a passenger rail service that will run from downtown Denton to the City of Carrollton, where passengers may transfer to the Dallas Area Rapid Transit (DART) system and continue travelling by rail within the Metroplex region. The rail service will be accompanied by the opening of two rail stations in Denton.

BACKGROUND

In 1999, a Comprehensive Plan, *the Denton Plan*, was adopted by the City following extensive outreach to citizens and staff input. The Denton Plan is available online through the City of Denton's Planning Division website: <http://www.cityofdenton.com/index.aspx?page=1110>. The Denton Plan includes the following Elements: Public Involvement, Land, Design, Environment, Community Development, Infrastructure, and Implementation. Denton has experienced significant growth in the years since the implementation of the Plan, including development within the city limits as well as the recent annexation of over 3,000 acres. Although many of the issues the Denton Plan attempted to address are still pertinent to the City's goals, many aspects of the Plan have not adequately kept pace with the changes seen since its implementation, and several aspects of the Plan have resulted in unintended consequences which must be addressed. The unique characteristics of the City and many of the initiatives currently underway create challenges and opportunities for comprehensive planning, and make this an ideal time to update the Denton Plan. The timing of this project will allow for the update of still relevant sections of the Denton Plan, with ongoing Mobility Plan updates, the Sustainability Plan, Neighborhood Plans, and other ongoing initiatives to achieve an effective, innovative Comprehensive Plan. The process will involve the review and incorporation of concepts from other City documents as well as original work based on stakeholder input and primary research that identifies the anticipated needs of the city.

The City desires an innovative, dynamic Comprehensive Plan that preserves the rich history of the community, yet addresses the changes seen since the incorporation of the City, and allows for fluid responsiveness to upcoming changes – both anticipated and unforeseen. It is expected that the updated Plan will be the result of existing resources and technology, coupled with primary research, outreach and assessment. The use of technological opportunities throughout the process is encouraged in order to yield a product that effectively incorporates the interests of all segments of the population, and ensures that implementation of the plan is followed through, and that the document itself is easily maintained.

2. MINIMUM SUBMISSION REQUIREMENTS

The following minimum requirements must be demonstrated in order for the submission to be **considered responsive** to the City of Denton. Any proposal received, which is determined to not meet these mandatory requirements shall be immediately disqualified and rejected as non-responsive.

- a. Five (5) years experience with similar projects for all principal team members from the areas standard for inclusion in comprehensive plans (e.g. Public Utilities and Infrastructure, Land Use Management and Assessment, Environmental Management and Sustainability, Economic Assessment, Community Services).

- b. A minimum of two (2) adopted plans which include some, but not necessarily all, of the areas standard for inclusion in comprehensive plans (e.g. Public Utilities and Infrastructure, Land Use Management and Assessment, Environmental Management and Sustainability, Economic Assessment, Community Services).
- c. The Proposing Firm must be registered by the State of Texas to provide any services which are required to complete this project, and the Firm must have all professional licensure required by the State to provide any services required to complete this project.

3. CONTRACT TERM

It is the intention of the City of Denton to award a contract for full-time professional consulting services Firm for the term of the project. Services undertaken pursuant to this RFP will be required to commence within fourteen (14) days of delivery of a Notice to Proceed. The services shall be accomplished per the Scope of Work and Services as identified in Section IV and the Schedule of Events as outlined in Section VI.

Section II

Scope of Work and Services

4. SCOPE OF WORK AND SERVICES

The scope of work shall be finalized upon the selection of the Firm. Your Firm's proposal submission shall have accurately described your understanding of the objectives and scope of the requested services and provided an outline of your Firm's process to implement the requirements of the Scope of Work and Services into a finished project, as indicated in Section II of the original RFP. It is anticipated that the scope proposal submission will include, at a minimum, the following, with a phasing plan to be mutually agreed upon by the consultant and the City of Denton:

A. ANTICIPATED PROJECT APPROACH AND REQUIREMENTS

The selected Firm's efforts are anticipated to include, at a minimum, the following:

1. Phase 1 - Scoping

- a. Gain familiarity with the Denton Plan and local Planning documents as well as ongoing City initiatives including the Sustainability Plan, Mobility Plan updates and the City's Capital Improvement Program. Ensuring that the Comprehensive Plan achieves consistency with adopted plans and ongoing plans is a primary objective.
- b. Offer sessions to executive staff and council on the role of a comprehensive plan, and identify key departments, documents and/or personnel to contribute to the comprehensive plan process. The number of meetings required will be negotiated with the final contract.
- c. Identify sources of data collected or maintained by the City (e.g. Lake Ray Roberts Growth Management Study, Resident surveys) that can be utilized, either in their entirety, or in part, to assist in the plan updating process, either for historical purposes or for current data. This effort will require the identification of the sources to be utilized, areas that are lacking and that will require augmenting through the update process, and areas that will require new surveys or other data collection, and how that is to be achieved as part of this contract.
- d. Identify and organize sources of data (e.g. census data) that can be used to develop population forecasts and growth management models related to population distribution and land use patterns.
- e. Examine the Capital Improvement Program and the City's Utility plans (e.g. Water, Wastewater, Denton Municipal Electric, and Solid Waste and Recycling) to inform Comprehensive Plan strategies.
- f. Examine the available plans and/or operations of any water, wastewater, electric, waste and recycling collection, or gas processing and distribution companies which serve the City and its extraterritorial jurisdiction that are not included in

items c or e above in order to identify areas of conflict or convergence with the City's plans that are identified through the Education and Outreach component of the project.

- g. Gain familiarity with the programming of regional entities which will directly impact the City's future land use planning, including, but not limited to North Central Texas Council Of Governments, Texas Department of Transportation, Vision North Texas, and surrounding cities, and incorporate appropriate variables into the items identified in the "Deliverables" section below.
- h. Gain familiarity with the programming of local entities which may impact the City's future land use planning, including, but not limited to the University of North Texas, Texas Woman's University, and Denton Independent School District, in order to identify areas of conflict or convergence with the City's plans that are identified through the Education and Outreach component of the project.

Deliverables to Phase I

- i. *An assessment of the Denton Plan to develop a prioritization program for the updating of the Elements of the Plan.*
- ii. *A strategy which identifies the areas of the Denton Plan that will be targeted for updating or creation, specifying the existing Elements or portions thereof, as well as other city initiatives and plans which will be incorporated in place of Elements identified in i., above.*
- iii. *Prepare population forecasts and growth scenario models based on current population distribution, land use designations, and land use patterns.*
- iv. *In collaboration with City staff, identify key personnel within the organization and from external entities that will be included in interagency stakeholder groups.*
- v. *Provide, in electronic and/or hard copy formats, the data collected through this phase.*
- vi. *Provide a written assessment of the data collected during this phase and how this will direct the efforts of Phases 2 and 3.*
- vii. *Proposed work plan to achieve objectives of Phases 2 and 3, below.*

2. Phase 2 - Outreach and Civic Engagement

- a. The engagement of the public, staff and targeted stakeholder groups is crucial in the updating process. In addition to traditional public meetings and randomized surveys to solicit input, it is anticipated that the Firm will use available technology, such as social media and other innovative techniques to create directed opportunities for public input in order to maximize the quantity

and quality of input received from as wide a demographic as possible. Public meetings will be required to solicit input from stakeholders, and it is expected that additional meetings and outreach activities will be undertaken in order to elicit participation from historically under- or unrepresented citizens to the greatest extent possible. Costs for all outreach activities will be borne by the consultant as part of the negotiated contract.

- b. Coordination with local entities will be required in order to identify growth projections, strategic plans and master plans from entities with a local or regional impact that will impact the City's future growth and development. These entities are expected to include, but may not be limited to, TxDOT, North Central Texas Council of Governments, Vision North Texas and surrounding cities.
- c. Coordination with local entities will be required in order to identify growth projections, strategic plans and master plans from entities with a local or regional impact that will impact the City's future growth and development. These entities are expected to include, but may not be limited to, the University of North Texas, Texas Woman's University, Denton Independent School District. Relevant issues and programming will be used to guide the Plan update process, especially as it relates to future land uses within the City limits that may be directed or impacted by external entities.
- d. Implementation of random surveys and web-based technology to solicit input, and the use of web-based technology to inform the citizens, staff and Council of the status of the process. This may include the use of interactive websites, social media, email subscription lists, etc. Innovative approaches are strongly encouraged. Use of social media should be coordinated with the City's existing social media sites, and adhere to the City's policy regarding the use of social media to interact with the public.

Deliverables to Phase II

- i. *Public meetings will be required to solicit input from citizen stakeholders; the number of meetings will be the minimum required to achieve the deliverable, and the number may be specified through the contract negotiation.*
- ii. *Additional public meetings and outreach activities in order to elicit participation from historically under- or unrepresented citizens to the greatest extent possible; the number of meetings will be the minimum required to achieve the deliverable, and the number may be specified through the contract negotiation.*
- iii. *Quarterly updates to executive staff.*
- iv. *Interagency coordination, as demonstrated through meetings or evidence of other communication or dialogues with external entities identified above in points b and c, which elicits the key policy and programming initiative of external entities likely to have the most*

direct impacts on the City's development and growth. The aspects identified through this exercise will be used to inform the creation or modification of the Plan Elements, and the City's future land use. The number of meetings will be the minimum required to achieve the deliverable, and the number may be specified through the contract negotiation.

- v. *A communication strategy to engage citizens and provide a venue to receive and convey information which includes the procedures to be put in place to ensure regular, and ongoing updates throughout the Plan update process, as well as following the adoption of the updated Plan.*

3. Phase 3 - Plan Preparation & Presentation

- a. A draft Comprehensive Plan Update which includes all of the updated and new Elements and references to supporting plans is required. The plan will be prepared in clear, concise language and will be presented in a visually appealing manner that is accessible to staff and the general public.
- b. Maps and appropriate accompanying graphics that complement the Elements of the Plan and which are appropriate for the content are expected.
- c. Elements will be formatted to provide consistent appearance and ease of use.
- d. The content of each Element is expected to be dynamic and allow for responses to changes and challenges that are reasonably anticipated as the City continues to grow and develop.
- e. An implementation strategy will be required. The implementation strategy must include an evaluation program that identifies indicators and methods of using the indicators to monitor the success of the Plan as well as the timing for the evaluation of each Element or indicator. Each indicator should also be accompanied by appropriate benchmarks to easily identify and track the success of various elements of the Plan. The format of the evaluation program must be specified by the Firm, and it must be developed for paper reports as well as website presentation, or in a format that is easily adapted to both media.
- f. Draft elements of the Plan should be presented to staff and the appropriate sub-committees of the City Council (e.g. Mobility Committee, Committee on the Environment, etc.). The Firm will present the draft Plan, either in phases or as a compiled document, to the Planning and Zoning Commission and the City Council and respond to input received, modifying the documents accordingly in preparation of the final Plan.
- g. The Firm will provide an updated Plan to staff and present the Plan to the Planning and Zoning Commission and the City Council in a form that is adopted by the City Council.

Deliverables to Phase III

- i. *A compiled draft Comprehensive Plan document for review by key City staff and committees. A minimum of 15 hard copies and one electronic copy will be made available by the consultant for all commission and board meetings referenced in f and g above.*
- ii. *Data for maps will be made available to staff for the purposes of updating, reproduction, or data analysis. All data should be provided as shape files in ArcGIS format, at least version 9.3.*
- iii. *Implementation Strategy which provides measurable and easily tracked indicators and benchmarks, as well as a process for tracking the implementation success.*
- iv. *A Standard Procedure for requesting amendments to the Updated Plan, in which the minimum information required and request formats are identified.*
- v. *Program for reevaluation of the Elements and key indicators on a bi-annual basis in order to identify areas of the Plan that may require adjusting.*
- vi. *Follow up public meetings or further data collection may be required to address issues or concerns raised during the completion of items f and g, above, and planning for this should be anticipated during this phase of the process and ensure that the proposal includes contingency plans for such follow up, if required.*
- vii. *Updated Comprehensive Plan; the Plan drafts shall be vetted as described above and taken to the Planning and Zoning Commission for a recommendation, and to City Council for adoption. Once adopted, the final version of the Plan will be provided to the Planning Division in electronic format, along with a minimum of 20 hard copies, unless otherwise negotiated.*

B. PROPOSED PROJECT STAFF

The respondent shall identify the key personnel who will be directly assigned to primary areas. State the qualifications and related experience of each member of the proposed project team and designate the employ of each team member e.g. company employee, contract employee, etc., and demonstrate Company's or Individual's relevant experience to the type of work solicited in the RFP. Provide an Organizational Chart with roles and responsibilities of key individuals assigned to support the project. Include State of Texas Professional registration numbers and National certification numbers for individuals that will have design, inspection, testing, and certification responsibility for the specific requirements. Respondent must be registered, or have personnel on their direct staffs that are registered in the professional services discipline required to perform the services requested in this RFP. Respondent shall certify that all staff selected for this project shall be based on demonstrated competence and qualifications, in the matter provided.

1. Team Organization:

- a. Provide details of how the team will be organized in order to provide continuity of project management and review over. Project Managers are expected to be available to attend all required meetings within the City; the availability of Project Manager(s) should be addressed specifically. Discuss the Firm's proposed team organization and communication methods. Be specific with regard to internal and external communications, quality control, electronic capabilities, and individual responsibilities.
- b. Provide details of the Project Managers qualifications and their role in Team coordination and their experience managing similar scale projects.

Provide a description of the Team:

- i. Identification of the proposed Project Manager and their role in the project
- ii. Identification of principals for each Element or area of the Plan, if team is to be organized in this manner
- iii. Identification of key personnel and their area(s) of expertise (i.e. areas with which they have at least five (5) years of experience)
- iv. Organization Chart
- v. Resumes for each key individual and principal on the team and definition of that individual's role in the project; resumes may be included in a separate appendix

C. ANTICIPATED PROBLEMS AND PROPOSED SOLUTIONS

Respondent shall offer written observations, based upon previous experiences in public projects of this magnitude, addressing any anticipated problems and offer proposed solutions to those problems.

D. RELEVANT EXPERIENCE AND CAPABILITIES

The responding Firm shall provide pertinent information about the Firm and related experience with primary areas. In addition, the Firm should identify its total number of technical and professional personnel by discipline and training and further describe the workload during the period. Indicate what resources (including professional and technical time) the Firm will have available to allocate to the project within the primary areas. The respondent must currently be licensed to perform work in the State of Texas. A copy of current licensing must be included in your proposal. Relevant experiences and capabilities of the Firm's team members and team as a whole will be rated by the City by a review of both completed and on-going assignments, years of relevant experience in communities of comparable size, and credentials; greater weight will be given to project experience within the past five (5) years containing the team members proposed:

FIRMS ORGANIZATION

- a. Name and Address of the Firm or Collaborating Firms
- b. General overview of the Firm(s)
- c. Firm Profile(s), including:
 - i. Type of Firm (limited partnership, corporation, etc.)
 - ii. Firm History and Age
 - iii. Firm Size (including number in each required discipline)
 - iv. Areas of special concentration
 - v. Telephone number and fax number

Relevant project experience information to include:

- a. Entity Name and Location
- b. Project description with specific descriptions of responsibilities, successes and failures related to project scope. Include website URLs for any projects for which they are available.
- c. Name and contact information for the project manager or other key contact with the entity contracting these services.
- d. Nature of professional services delivered by Firm on each of these relevant projects, including identification of the responsibility and scope of the team member proposed for participation on the City project.
- e. List of municipal and private developer client references for relevant projects with contact names and telephone numbers
- f. Past experience on similar and relevant projects.
- g. Details of any awards received.

Project Understanding:

- a. Briefly describe your understanding of the project scope, important issues, and City requirements.

Project Approach:

- a. State briefly the Firm's opinion about the most important considerations and challenges that must be addressed in this project, and how the Firm intends to overcome them. Specifically address consensus building, interagency challenges, and maintaining schedules.
- b. State the Firm's standard operating procedure with regard to project management, specifically addressing the continuity of personnel in projects of this scale.
- c. Provide the anticipated percentage of time that each key team member will allocate to the project, for each phase.
- d. Provide a schedule for the anticipated project duration. Schedule should include each anticipated phase of work, as you currently understand the project's scope.
- e. Provide a statement of projected deliverables: Reports, models, graphics, data collected, etc.

Relevant Experience:

The Respondent shall have the following minimum experience and demonstrate compliance with the following requirements: (Firms which have not detailed their project experience as listed below shall be considered nonresponsive).

- a. Include three (3) examples of past work that have been adopted by a municipality, institute of higher education, or other similar entity, which demonstrates a Comprehensive or Master Plan. Provide URL's for websites, where available.
- b. Five (5) years experience with similar projects for all principal team members from the areas standard for inclusion in comprehensive plans (e.g. Public Utilities and Infrastructure, Land Use Management and Assessment, Environmental Management and Sustainability, Economic Assessment, Community Services).
- c. A minimum of two (2) adopted plans which include some, but not necessarily all, of the areas standard for inclusion in comprehensive plans (e.g. Public Utilities and Infrastructure, Land Use Management and Assessment, Environmental Management and Sustainability, Economic Assessment, Community Services).
- d. The Proposing Firm must be registered by the State of Texas to provide any services which are required to complete this project, and the Firm must have all professional licensure required by the State to provide any services required to complete this project.
- e. The Firm or any member Firm(s) must disclose any business relationship that would have an effect, or potential economic benefit to their client(s). A conflict of interest statement must be signed as part of the contract negotiated with the selected Firm.
- f. The Firm or member Firm(s) must have a multi-disciplinary staff in their employ of a size sufficient to perform the services outlined. These disciplines may include Planning, Environmental Scientists, and Design professionals. The project manager must have at least five years of project management and community planning experience.
- g. City desires continuity from the Firm selected: Lack of continuity or frequent changes in staffing for this Plan may result in termination of the contract. Any staffing changes must be mutually agreed upon between the City and the selected Firm.
- h. Provide comments and feedback in a timely manner in accordance with City's timelines.

The Respondent shall demonstrate through previous minimum experiences, the ability to maintain Budget and Schedule compliance for large scale public projects. Respondent shall complete Exhibit A – Budget and Compliance Questionnaire Form.

The Respondent shall demonstrate exceptional Quality Assurance, through previous minimum experiences. Respondent shall provide the name and job title of the person in your organization who oversees your quality assurance program. Provide a description of your Firm's quality assurance program. The City of Denton reserves the right to require a copy of your Quality Control Manual and Quality Assurance Processes, which, if contracted, will become a contract document.

Respondent shall detail any and all relevant history of litigation involving public projects.

Respondent shall detail any and all exceptions within the proposal response.

E. REFERENCES

Respondent shall provide references including contact names, e-mail addresses and current, correct phone numbers of Firms or public entities for which you have performed similar professional services.

F. INSURANCE

Respondent shall provide a certificate of insurance evidencing their general liability, automobile and worker's compensation insurance coverage's and amounts.

G. ADDITIONAL GENERAL PROJECT REQUIREMENTS

1. Prior to commencement of Comprehensive Plan Update, the City and selected consultant will conduct an initial meeting to review project scope, project schedule, deliverables and planning process.
2. Selected consultant will facilitate all stakeholder meetings and make all needed presentations to the Planning and Zoning Commission and City Council and any other Council subcommittee necessary for review prior to adoption of the Plan.
3. The selected consultant shall submit draft documents to City representatives, through the City's project manager, prior to creating any final documents. The consultant will document a response to each comment received by City representatives, including staff, boards, commissions and City Council.
4. Staff available to assist the selected consultant is limited; the proposals submitted should not anticipate extensive staff assistance during all phases of the project.

H. PROVIDE A STATEMENT OF INTEREST

Provide a statement of interest relative to this specific project, including a statement of availability to undertake this project, personnel proposed for the project team, information on similar or relevant projects which the Firm has executed and describe the Firm's approach and understanding of the project.

SECTION III

Payment and Performance Requirements

V. PAYMENT AND INVOICES:

All proposals shall specify terms and conditions of payment, which will be considered as part of, but not control, the award of proposals. City review, inspection, and processing procedures ordinarily require thirty (30) days after receipt of invoice, materials, or services. Proposals which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified.

Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

VI. TAX EXEMPTION:

The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Contractor performing work under this contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

VII. PAYMENT TO PERFORMANCE MILESTONES:

Awarded contractor shall prepare and **submit invoices after completion of specific project milestones**. The invoice shall detail the major milestones accomplished and detailed cost information for project. These milestones shall be submitted to the City of Denton and the City's Project Staff shall review such for completion and accuracy, prior to payment authorization. The City of Denton shall hold **05%** of each submitted invoice as retainage, with full payment due, including all retainage at the project completion and acceptance by the City of Denton. **The respondent shall complete Exhibit 1, Pricing Sheet for RFP 4672.**

SECTION IV Submittal Information

VIII. SCHEDULE OF EVENTS:

The City of Denton reserves the right to change the dates indicated below:

Solicitation Schedule:

Issue RFP:	4/26/2011
Confidentiality Agreement Due Date:	5/11/2011
Pre-Submittal Conference:	5/11/2011 @ 10:00 AM CST
Deadline for Submission of Questions:	5/16/2011 @ 2:00 PM CST
Deadline for Submission of Proposal:	6/06/2011 @ 2:00 PM CST
Evaluate and rank initial results:	6/07/2011

Oral Interviews/Presentations, **if required** by City of Denton:

Oral Interviews/Presentation:	6/14/2011
Completion of Negotiations:	6/30/2011
Official Award:	7/15/2011

If Oral interview/Presentations **not required** by the City of Denton:

Completion of Negotiations:	6/14/2011
Official Award:	7/15/2011

The City of Denton is using the RFP 'Issue Date' as noted in the Schedule of Events above as the official 30 day notification requirement for an interview with a professional Firm.

IX. PRE-SUBMITTAL CONFERENCE:

The pre-submittal conferences were scheduled and conducted on Wednesday 5/11/2011 @ 10:00 AM. Attendance of the pre-bid conference was required to be considered as responsive.

X. SUBMISSION REQUIREMENTS

The City of Denton shall accept written Proposals from only those Firms that attended the pre-bid meeting, May 11th, 2011 at 1:00 p.m. Those Firms that attended the pre-bid meeting and submitted a responsive Proposal shall submit one original copy signed by an officer authorized to bind the company, and 4 copies of the completed RFP response in a sealed envelope. ***Additionally, the respondent shall provide a formatted CD(s) or memory drive, containing a complete copy of the vendor's response to this RFP.*** The format shall be in Microsoft Office format.

RFP responses may be hand delivered (by Firm or express courier) to the address listed below; e-mailed submittals will not be accepted for this solicitation. Where responses are sent by mail or courier, the responsibility of timely delivery is the respondent's. Pages should be numbered and contain an organized, paginated table of contents corresponding to the section and page of the submittal. Appendices may be used for general Firm information and resumes. The RFP response shall be no more than 100 pages in length. All submittals, whether mailed or delivered by courier shall be sent to and received **no later than 2:00 p.m., CST, June 6th, 2011** to the following address:

City of Denton
Attention: Jody Hays
Buyer - Purchasing Department
901 Texas Street, Denton, TX 76209
940-349-7132

Any proposal received after the date and/or hour set for proposal opening will be returned unopened. The City of Denton reserves the right to accept or reject in part or in whole any proposals submitted, and to waive technicalities of the submission, in the best interest of obtaining best value for the City. Submitted proposals shall remain in effect for a (90) ninety day period after due date, or until award is executed.

Submittals shall include on the envelope and the cover sheet the following information: **REQUEST FOR PROPOSALS# 4672 FOR CITY OF DENTON COMPREHENSIVE PLAN UPDATE.**

XI. PROPOSERS COST TO DEVELOP SUBMITTAL:

Respondents to this RFP are responsible for all costs of submittal preparation, delivery and any oral presentations required as part of the selection process. All materials submitted in response to the RFP become property of the City of Denton and will be returned only at the option of the City.

XII. MINIMUM RESPONSE:

Submittals that do not, at a minimum, contain the information as specified under Section II Scope of Work and Services, and Exhibit 1 Pricing Sheet, will be subject to **disqualification** at the sole discretion of the City of Denton. If any Firm submitting a Proposal is a corporation, it must be registered to conduct business in the State of Texas. Proof of this registration **must be included** as part of the submittal.

XIII. REJECTION OF SUBMITTAL:

ANY PROPOSAL SUBMITTED AFTER THE DUE DATE AND TIME SPECIFIED WITHIN SECTION IX, SHALL BE REJECTED.

The City of Denton reserves the right to reject any and all submittals received in response to the RFP and to waive any minor technicalities or irregularities as determined to be in the best interest of the City.

XIV. PROPRIETARY INFORMATION:

If a Proposer does not desire proprietary information in the Proposal to be disclosed, the Proposer shall identify all proprietary information in the Proposal. This identification will be accomplished by individually marking each page or line item detail with the words "Proprietary Information". If the Proposer fails to identify proprietary information, the Proposer agrees that by submission of its Proposal, that those sections shall be deemed non-proprietary and made available upon public request. Proposers are advised that the City, to the extent permitted by law, will protect the confidentiality of all Proposals. Proposer shall consider the implications of the Texas Public Information Act, particularly after the RFP process has ceased and the Contract has been awarded. While there are provisions in the Texas Public Information Act to protect proprietary information, where the Proposer can meet certain evidentiary standards, please be advised that a determination on whether those standards have been met will not be decided by the City of Denton, but by the Office of the Attorney General of the State of Texas. In the event a request for public information is made, the City will notify the Proposer, who may then request an opinion from the Attorney General pursuant to 552.305, Texas Government Code. The City will not make a request of the Attorney General.

XV. NON-ENDORSEMENT:

If a Proposal is accepted, the successful Proposer shall not issue any news releases or other statements pertaining to the award or servicing of the agreement that state or imply the City of Denton's endorsement of the successful Proposer's services.

XVI. UNAUTHORIZED COMMUNICATIONS:

After release of this solicitation, Proposer contact regarding this RFP with members of the RFP evaluation, interview or selection panels, employees of the City or officials of the City other than the Purchasing Manager, or authorized City of Denton purchasing staff, or as otherwise indicated is prohibited and may result in disqualification from this procurement process. No officer, employee, agent or representative of the Proposer shall have any contact or discussion, verbal or written, with any members of the City Council, members of the RFP evaluation, interview, or selection panels, City staff or City's consultants, or directly or indirectly through others, seeking to influence any City Council member, City staff, or City's consultants regarding any matters pertaining to this solicitation, except as herein provided. If a representative of any Proposer violates the foregoing prohibition by contacting any of the above listed parties with whom contact is not authorized, such contact may result in the Proposer being disqualified from the procurement process. Any oral communications are considered unofficial and non-binding with regard to this RFP.

XVII. CONTACT BETWEEN PROPOSER AND THE CITY OF DENTON

Respondents shall direct all inquiries and communications concerning this RFP to the Point of Contact(s) listed below:

City of Denton Procurement Point of Contact: City of Denton Technical Point of Contact:

Jody Hays
Buyer
901 Texas Street
Denton, TX 76209
(940) 349-7132
Fax: (940) 349-8190
Jody.Hays@cityofdenton.com

Jane Gurney
Senior Planner
221 North Elm Street
Denton, Texas 76201
(940) 349-8368
Fax (940) 349-7707
Jane.Gurney@cityofdenton.com

SECTION V Evaluation and Award

XVIII. EVALUATION AND AWARD PROCEDURES

Selection of a Firm(s) to provide the aforementioned services will be in accordance with the City of Denton Purchasing Policies and procedures. The technical proposal submissions shall be sent to the City in a separate, sealed submission by the due date of June 6th, 2011 at 2:00 pm. The City of Denton shall open all technical proposals and evaluate each respondent in accordance to the below criteria:

Step 1: The City of Denton will evaluate the **Proposal** submission in accordance with the selection criteria and will rank the Firms on the basis of the submittals. The City of Denton, reserves the right to consider information obtained in addition to the data submitted in the Proposal. The selection criterion is listed below:

a) Firms understanding of the project and utilization of innovative techniques, Qualifications of the Respondent (FACTOR: 20%).

The respondent's understanding of the objectives and scope of the requested services of the primary areas, in a clear and concise, written expression.

The personnel cited shall be designated as to whether they are an employee, consultant or contract employee of the RFP respondent. Their educational and professional credentials as well as direct experience on similar projects will be considered in evaluating the respondent. Experience with other municipally funded projects and familiarity with municipal requirements and procedures will also be considered in the evaluation process.

b) Quality of previous performance and past experience with Comprehensive Planning (FACTOR: 20%).

The respondent's successful experience in projects within the primary areas similar to the scope of work requested in this RFP will be a major consideration. Based on the past performance of both the individual project personnel and the respondent, the City of Denton will determine if the respondent has the track record to provide the required services in successfully administering similar projects. The meeting of project budgets and project schedules will be items of consideration in evaluating past performance.

c) Key personnel available for this project and References (FACTOR: 05%).

The qualifications of the respondent in terms of experience, service capability and resources will be reviewed in order to assess the ability of the respondent to successfully complete the project assignment. The Firm's ability to provide the necessary professional and technical expertise and supervision will be a major consideration. The qualifications and experience of the individuals who will be directly assigned to the primary areas shall be considered.

d) Ability to maintain schedule and budget for projects of similar scale or complexity (FACTOR: 15%).

e) Total Costs submitted for the Project (FACTOR: 40%).

The total possible score of the proposals shall be scored and weighted as indicated in a-e. Based on the outcome of the computations performed, each proposal will be assigned a raw score. The assigned weight will then be applied to these scores to calculate an overall score for each proposal for completion of the final scoring process.

The proposals shall be evaluated utilizing standard tools, based upon the weighted factors above, and will be assigned a final score. The City of Denton will proceed to Step 2, with the Firm(s) that are considered within the competitive range and present an overall best value to the City of Denton.

Step 2: After the final ranking of the proposals and determination of Firm(s) that provide a best value to the City and are within the competitive range, provided the City of Denton elects to proceed without oral discussions, the City will immediately proceed to negotiate final pricing, terms and conditions with the **highest ranked Firm or Firms**. The City of Denton may elect to conduct oral discussions, request clarifications, and presentations concerning the project approach and ability to furnish the requirements, as part of the negotiation process. The City may elect to utilize a Best and Final negotiation phase to determine the Firm that provides and overall best value to the City.

Step 3: The City of Denton Planning Division and the Procurement Department shall provide a written recommendation to the City of Denton City Council, and request authorization to proceed with contract execution for the proposed services.

The award process is considered open and on-going until **all final negotiations** have concluded. After all negotiations and final award notification is issued by the City of Denton, the unsuccessful respondent(s) may request a debriefing regarding their submittal. Please contact the City of Denton Procurement staff to document the request for a debriefing. A meeting with the City of Denton Procurement Staff and the Planning Department shall be provided in a timely manner.

SECTION VI
City of Denton
Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's solicitation are applicable to Contracts/Purchase Orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller herein after referred to as the Bidder, Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the Sellers Proposal response, Invoice or Statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Contract/Purchase Order these written provisions will take precedence.

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

9. PLACE AND CONDITION OF WORK: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

Environmental Protection: The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

12. INVOICES:

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor.

15. FINAL PAYMENT AND CLOSE-OUT:

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

- i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
- ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examines, or reproduces, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract or by the manufacturer, the warranty period shall be at least one year or the manufacturer's warranty period, whichever is longer, from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. RIGHT TO ASSURANCE: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. **DELAYS:**

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY:** A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Attachment A**. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

City of Denton
Procurement Department
901B Texas Street
Denton, Texas 76209

- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.

xiv. The insurance coverage's specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform there under, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76201 and marked to the attention of the Procurement Manager.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. OWNERSHIP AND USE OF DELIVERABLES: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. PUBLICATIONS: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. ADVERTISING: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. GRATUITIES: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

44. INDEPENDENT CONTRACTOR: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement.

45. ASSIGNMENT-DELEGATION: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

46. WAIVER: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

47. MODIFICATIONS: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

48. INTERPRETATION: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. DISPUTE RESOLUTION:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, performable in Denton County, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or

interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. HOLIDAYS: The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day (observed)	Friday, December 31, 2010
MLK Day	Monday, January 17, 2011
Memorial Day	Monday, May 30, 2011
4th of July	Monday, July 4, 2011
Labor Day/Sept 11 observed for Fire Civil Service employees	Monday, September 5, 2011
Thanksgiving Day	Thursday, November 24, 2011
Day After Thanksgiving	Friday, November 25, 2011
Christmas Eve (observed)	Friday, December 23, 2011
Christmas Day (observed)	Monday, December 26, 2011
New Year's Day (observed)	Monday, January 2, 2012

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or authorized designee(s).

53. SURVIVABILITY OF OBLIGATIONS: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

55. EQUAL OPPORTUNITY

A. Equal Employment Opportunity: No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No person shall, on the grounds of race, sex, age, handicap, creed, color, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFP.

B. Americans with Disabilities Act (ADA) Compliance: No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract;

but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

57. RIGHT TO INFORMATION: The City of Denton reserves the right to use any and all information presented in any response to this solicitation, whether amended or not, except as prohibited by law. Selection or rejection of the submittal does not affect this right.

59. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

60. PREVAILING WAGE RATES: All respondents will be required to comply with Provision 5159a of "Vernon's Annotated Civil Statutes" of the State of Texas with respect to the payment of prevailing wage rates and prohibiting discrimination in the employment practices.

<http://www.access.gpo.gov/davisbacon/tx.html>

61. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; (iii) §2155.003, Gov't Code, which prohibits the chief clerk or any other employee of the CPA from having an interest in, or in any manner be connected with, a contract or solicitation for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, CPA shall not be responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

62. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

63. DRUG FREE WORKPLACE: The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

64. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

65. FORCE MAJEURE: The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

66. NON-WAIVER OF RIGHTS: Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

67. NO WAIVER OF SOVEREIGN IMMUNITY: The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

67. RECORDS RETENTION: The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the City of Denton or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the City of Denton, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

ATTACHMENT A INSURANCE REQUIREMENTS AND WORKER'S COMPENSATION REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.

As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
 - Name as additional insured the City of Denton, its Officials, Agents, Employees and volunteers.
 - That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

[X] A. General Liability Insurance:

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

[X] Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all owned hired and non-owned autos.

[X] Workers Compensation Insurance

Contractor shall purchase and maintain Worker's Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees and volunteers for any work performed for the City by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Worker's Compensation Commission (TWCC).

[X] Owner's and Contractor's Protective Liability Insurance

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least **\$500,000.00** combined bodily injury and property damage per occurrence with a **\$1,000,000.00** aggregate.

[] Fire Damage Legal Liability Insurance

Coverage is required if Broad form General Liability is not provided or is unavailable to the contractor or if a contractor leases or rents a portion of a City building. Limits of not less than _____ each occurrence are required.

[X] Professional Liability Insurance

Professional liability insurance with limits not less than **\$1,000,000.00** per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

[] Builders' Risk Insurance

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.

[] Commercial Crime

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \$_____ each occurrence are required.

☐ **Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

☒ **Worker's Compensation Coverage for Building or Construction Projects for Governmental Entities**

A. Definitions:

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - 2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - 3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 4. obtain from each other person with whom it contracts, and provide to the contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

ATTACHMENT B

Wage Determination

Refer to: <http://www.access.gpo.gov/davisbacon/tx.html>

Quoting Requirements, Contract Forms & Conditions of the Contract Wage Rates & Payroll Reporting

1. Payment

(A) Employee Certification

CONTRACTOR, Its Subcontractors, and their Sub-subcontractor shall identify in writing, the classification agreed to by all laborers, workmen and mechanics employed by them in the execution of the Contract, and pay not less than rates specified at the Texas Workforce Commission's website which can be accessed at. If work performed by worker is different than the classification agreed upon, the worker shall be paid the minimum wage for work performed.

(B) Prevailing Wages

Workers on Project shall be paid not less than wage rates described in this section. Such wage rates shall be used throughout the Contract. If a classification is to be used which is not listed in this section, CONTRACTOR shall request such rates from the Department of Labor and forward a copy of the request and response to OWNER. Inclusion of wage rates does not relieve CONTRACTOR from responsibility to comply with applicable State or Federal wage laws.

Wage rates shall be posted by CONTRACTOR at site of Work in a prominent place where they can be easily seen by workers. In the event there are multiple job sites (such as in street or utility construction), wage rates shall be posted at CONTRACTOR's office and be posted at other places where they would be most likely seen by workers.

(C) Overtime Requirements

No Contractor, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of forty hours in such workweek.

2. Apprentices and Trainees

(A) Locally Funded Projects

Apprentices and helpers will be permitted to work as such when they are listed on a payroll as an apprentice or helper. Apprentices or helpers are to be paid a minimum of 50 percent of journeymen wages indicated. The allowable ratio of apprentices or helpers in any craft is not to exceed 2:1. Employees who are not under the apprentice or helper program shall be paid the wage rate provided in contract for Work he actually performed.

3. Withholding of Payments

OWNER may withhold or cause to be withheld from CONTRACTOR as much of the accrued payments which may be determined necessary to pay laborers and mechanics employed by CONTRACTOR, Subcontractors, or Sub-subcontractors on the Work the full amount of wages required by this Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this contract, OWNER may, after written notice to CONTRACTOR, take such action as may be necessary

to cause suspension of any further payments or advance of funds to CONTRACTOR until such violations have ceased and until restitution has been made.

4. Payroll and Reports

Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by CONTRACTOR for all laborers and mechanics working on the Work. Such records shall contain name and address of each such employee, his/her correct classification, rates of pay, including fringe benefit rates when applicable, daily and weekly number of hours worked, deductions made and actual wages paid.

CONTRACTOR shall make payroll records available for inspection by authorized representatives of OWNER upon written request, and shall permit such representatives to observe and/or interview employees during working hours on Work site, for such time as is required to obtain personal verification of selected payroll data. If it is apparent that there is a wage rate violation or improper classification of employees, an investigation will be conducted, and action taken as appropriate.

5. Complaints and Penalty's

CONTRACTOR's attention is directed to House Bill TX 73 RHB 560 amending Art. 5159a, V.T.C.S. relating to the payment of certain laborers, workers, and mechanics under public works contracts.

ATTACHMENT C

BUDGET AND COMPLIANCE QUESTIONNAIRE AND FORMS

1. Firm Name :
2. Address:
3. Tax Payer ID#:
4. Email Address of Primary contact:
5. Website Address:
6. Telephone:
7. Fax:
8. Other Locations:
9. Organization Class:
 - Partnership
 - Individual
 - Corporation
 - Association
10. Date Established
11. Former Business Name:
12. Date of Dissolution:
13. Subsidiary of :
14. Historically Underutilized Business: Yes or No
15. Principals and Officers:

Please detail responsibilities with the name of each principal or officer.
16. Key Personnel and Responsibilities:

Please detail responsibilities with the name of each key personnel.
17. Number of Personnel by Discipline:

Discipline	Number of Staff	# Registered
------------	-----------------	--------------
18. Services Provided by Firm:

Please provide a detailed listing of all services provided by your Firm.
19. Professional Liability Coverage, Error & Omissions, etc.

Amount:

20. Work Type – Distribution by Proportion of Annual Average:

Work Type	% by Fee	% by No of Projects
-----------	----------	---------------------

21. Please indicate the total number of projects your Firm has undertaken within the last five years?

22. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved.

23. Please provide at least (5) five references (***preferably municipalities***) and contract amounts.

24. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number of Owner.

25. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number (s) of Owner (s).

26. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 "General Industry Standards" and/or 29 CFR 1926 "General Construction Standards" as they apply to your Company's customary activities?

http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926

ATTACHMENT D

SCHEDULE COMPLIANCE FORM

These next three forms shall document your firm's compliance with regards to meeting agreed to schedules. Please detail three of the most recent projects your Firm has completed:

Project #1

Name of Project:

Contract Award Date:

Actual Contract Completion Date:

Original Contract Required Completion Date:

Scoping Phase:	Date of Completion	# of Days difference in Required schedule
Research and Assessment	_____	_____
Strategy Development	_____	_____

Outreach and Civic Engagement:

Public Meetings and Outreach Activities Achieved	_____	_____
Communications Strategy Implemented	_____	_____

Plan Preparation and Presentation

Draft Comprehensive Plan for review	_____	_____
Data for Maps submitted to staff	_____	_____
Implementation Strategy submitted	_____	_____
Final Updated Comprehensive Plan and Electronic Format submission	_____	_____

ATTACHMENT D

SCHEDULE COMPLIANCE FORM

Project #2

Name of Project:

Contract Award Date:

Actual Contract Completion Date:

Original Contract Required Completion Date:

Scoping Phase:

Date of Completion

of Days difference in
Required schedule

Research and Assessment

Strategy Development

Outreach and Civic Engagement:

Public Meetings and Outreach Activities Achieved

Communications Strategy Implemented

Plan Preparation and Presentation
--

Draft Comprehensive Plan for review

Data for Maps submitted to staff

Implementation Strategy submitted

Final Updated Comprehensive Plan
and Electronic Format submission

ATTACHMENT D
SCHEDULE COMPLIANCE FORM

Project #3

Name of Project:

Contract Award Date:

Actual Contract Completion Date:

Original Contract Required Completion Date:

Scoping Phase:

Date of Completion

of Days difference in
Required schedule

Research and Assessment

Strategy Development

Outreach and Civic Engagement:

Public Meetings and Outreach Activities Achieved

Communications Strategy Implemented

Plan Preparation and Presentation

Draft Comprehensive Plan for review

Data for Maps submitted to staff

Implementation Strategy submitted

Final Updated Comprehensive Plan
and Electronic Format submission

ATTACHMENT D

BUDGETING COMPLIANCE FORM

The next three forms shall document your firm's compliance with agreed upon costs. If there are extenuating circumstances, please provide an explanation on a separate page. Please detail three of the most recent projects your Firm has completed:

Project #1

Name of Project:

Owner's Original Budget amount:

Design-Build Original Cost Estimate:

Original Contract Total Amount:

Final Construction Cost:

Scoping Phase:	Original Cost	Final Cost
Research and Assessment	_____	_____
Strategy Development	_____	_____

Outreach and Civic Engagement:

Public Meetings and Outreach Activities Achieved	_____	_____
Communications Strategy Implemented	_____	_____

Plan Preparation and Presentation

Draft Comprehensive Plan for review	_____	_____
Data for Maps submitted to staff	_____	_____
Implementation Strategy submitted	_____	_____
Final Updated Comprehensive Plan and Electronic Format submission	_____	_____

ATTACHMENT D

BUDGETING COMPLIANCE FORM

Project #2

Name of Project:

Owner's Original Budget amount:

Design-Build Original Cost Estimate:

Original Contract Total Amount:

Final Construction Cost:

Scoping Phase:

Original Cost

Final Cost

Research and Assessment

Strategy Development

Outreach and Civic Engagement:

Public Meetings and Outreach Activities Achieved

Communications Strategy Implemented

Plan Preparation and Presentation
--

Draft Comprehensive Plan for review

Data for Maps submitted to staff

Implementation Strategy submitted

Final Updated Comprehensive Plan
and Electronic Format submission

ATTACHMENT D
BUDGETING COMPLIANCE FORM

Project #3

Name of Project:

Owner's Original Budget amount:

Design-Build Original Cost Estimate:

Original Contract Total Amount:

Final Construction Cost:

Scoping Phase:

Original Cost

Final Cost

Research and Assessment

Strategy Development

Outreach and Civic Engagement:

Public Meetings and Outreach Activities Achieved

Communications Strategy Implemented

Plan Preparation and Presentation

Draft Comprehensive Plan for review

Data for Maps submitted to staff

Implementation Strategy submitted

Final Updated Comprehensive Plan
and Electronic Format submission

ATTACHMENT E
SAFETY RECORD QUESTIONNAIRE
(Must Be Submitted With Proposal response)

The City of Denton desires to avail itself of the benefits of Section 252.0435 of the Local Government Code, and consider the safety records of potential contractors prior to awarding contracts for the City of Denton contracts. Pursuant to Section 252.043(b) (8)) of the Local Government Code, the City of Denton shall consider the safety record of a respondent prior to awarding contracts on City contracts.

The definition and criteria for determining the safety record of a respondent for this consideration shall be:

The City of Denton shall consider the safety record of the respondents in determining the responsibility thereof. The City may consider any incidence involving worker safety or safety of the citizens of the City of Denton, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider, among other things:

- a. Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the respondent for violations of OSHA regulations within the past three (3) years.
- b. Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of Health (TDH), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- c. Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.
- d. Any other safety related matter deemed by the City Council to be material in determining the responsibility of the respondent and his or her ability to perform the services or goods required by the proposal documents in a safe environment, both for the workers and other employees of respondent and the citizens of the City of Denton.

In order to obtain proper information from respondents so that City of Denton may consider the safety records of potential contractors prior to awarding City contracts, the City of Denton requires that respondents answer the following three (3) questions and submit them with their proposals:

QUESTION ONE

Has the respondent, or the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES _____ NO _____

If the respondent has indicated YES for question number one above, the respondent must provide to City of Denton, with its proposal submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

QUESTION TWO

Has the respondent, or the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations, of any kind or type, within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.

YES _____ NO _____

If the respondent has indicated YES for question number two above, the respondent must provide to City of Denton, with its response, the following information with respect to each such conviction:

Date of offense or occurrence, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

QUESTION THREE

Has the respondent, or the firm, corporation, partnership, or institution represented by respondent, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

YES _____ NO _____

If the respondent has indicated YES for question number three above, the respondent must provide to City of Denton, with its proposal submission, the following information with respect to each such conviction: Date of offense, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

ATTACHMENT F

VENDOR REFERENCES

Please list three (3) Government references, **other than the City of Denton**, who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this proposal.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

ATTACHMENT G

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.		OFFICE USE ONLY
This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.		Date Received
1	Name of person who has a business relationship with local governmental entity.	
2	☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)	
3	Name of local government officer with whom filer has an employment or business relationship. Name of Officer This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? ☐ Yes ☐ No B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No D. Describe each affiliation or business relationship.	
4	Signature of person doing business with the governmental entity Date	

ATTACHMENT H

Adopted 06/29/2007

DISADVANTAGED BUSINESS UTILIZATION

The City of Denton will ensure that purchases of equipment, materials, supplies, and /or services comply with Texas Local Government Code 252.0215, in regards to competitive requirements in relation to Disadvantaged Business Enterprises (DBE). The City will ensure that all procurement opportunities are cost effective, and contributable to the competitiveness of the City, and its customers. All Procurement activities will be conducted in an open and fair manner with equal opportunity provided for all qualified parties. The City of Denton will provide equal contracting opportunities as provided by State and Federal law to small business enterprises, Historically Underutilized Businesses, and Disadvantaged Business Enterprises. The City of Denton **encourages** all awarded Contractors to seek qualification as a DBE and/or utilize DBE's as sub-contractors, where feasible, to meet the overall intent of the legislation.

Disadvantaged Business Enterprises (DBE): are encouraged to participate in the City of Denton's procurement process. The Purchasing Department will provide additional clarification of specifications, assistance with Proposal Forms, and further explanation of procurement procedures to those DBEs who request it. Representatives from DBE companies should identify themselves as such and submit a copy of the Certification. The City recognizes the certifications of the State of Texas Building and Procurement Commission HUB Program. All companies seeking information concerning DBE certification are urged to contact.

State of Texas HUB Program – TPASS Division
PO Box 13047, Austin, TX 78711-3047
(512) 463-5872 or (888) 863-5881 or <http://www.window.state.tx.us/procurement/prog/hub/>

Instructions: If your company is already certified, attach a copy of your certification to this form and return with the submission. If your company is not already certified, and could be considered as meeting certification requirements, please use the [web link](#) to obtain such. If you are submitting a response and plan to utilize DBE's, then use the form below to identify the business and include the business HUB certification.

COMPANY NAME: _____

REPRESENTATIVE: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NO. _____ FAX NO . _____

Indicate all that apply:

- _____ Minority-Owned Business Enterprise
- _____ Women-Owned Business Enterprise
- _____ Disadvantaged Business Enterprise

EXHIBIT I

SOLICITATION CHECKLIST

Checklist for RFP #4672

Title: City of Denton Comprehensive Plan Update

Opening Date: 6/6/2011 @ 2:00 PM

Contractor Name and Address: _____

Contact: _____

TX Taxpayer VIN#: _____

Phone: _____

Fax: _____

Email: _____

1. Submit one (1) original and four (4) copies of submittal _____
2. Submit one (1) PDF copy on a formatted CD: _____
3. Submittal Content
 - Review all requirements _____
 - Ensure your firm meets all stated minimum requirements _____
 - Company Information _____
 - Relevant Experience and Qualifications _____
 - Methodology _____
 - Quality Assurance / Quality Control _____
 - Litigation History Statement _____
 - Attachment A, Review _____
 - Attachment B, Review _____
 - Attachment C, Review, complete, and return _____
 - Attachment D, Review, complete, and return _____
 - Attachment E, Review, complete, and return _____
 - Attachment F, Review, complete, and return _____
 - Attachment G, Review, complete, and return _____
 - Attachment H, Review, complete, and return _____
 - Attachment I, Review, complete, and return _____
 - Exhibit 1, Review, complete, and return _____
4. Submit Proposal by email, courier, hand delivery or mail _____

ATTACHMENT J

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF DENTON

I certify that I have made no willful misrepresentations in this Proposal Submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this proposal will be investigated, with my full permission, and that any misrepresentations or omissions may cause my proposal to be rejected.

Signature

Title

Exhibit 1

City of Denton - RFP 4672

Tab 1 - Required Additional Questions

Company Name:

Instructions: Please complete the questions listed below and provide additional documentation as required.

Detailed Questions		City, State	Yes/No	# of Years	#of Projects
1	Please indicate your principal place of business				
2	Does your company have an established physical presence in the State of Texas?				
3	Do you have prior experience working on similar projects with State of Texas governmental agencies?				
4	Have you provided similar services for over five (5) years? If so, how many years?				
	Do you have documented proof of at least three (3) projects in the past five (5) years that provided exceptional service to the governmental entity? If so, please provide the documentation within the proposal response.				
5					
	Can you provide a detailed comprehensive plan strategy to meet the City of Denton objectives? The Strategy presentation must be clear and defined. If so, please submit this documentation with the proposal response.				
6					
	Can you provide a detailed list of references and detailed history of successful performance with drafting comprehensive plans? If so, please submit this list with the proposal response.				
7					
8	How many previous successful projects are contained within this list?				
9	Do these projects cover the major metro areas of the United States?				
	Can you describe similar services your organization has provided to at least three (3) governmental agencies in the past 5 years that demonstrates your organization’s capability to carry out the proposed services?				
10					
	If you can describe the similar services, please indicate a response to each subcategory below, and submit this documentation with the proposal response;				
11					
11.a	<i>the nature of the services provided</i>				
11.b	<i>the scope of the activities</i>				
11.c	<i>the organizations for which the services were provided</i>				
11.d	<i>the dates the projects were performed</i>				
11.e	<i>the documented benefit to the governmental entity</i>				
12	Can you provide a sample of the previous comprehensive plans that achieved success?				
	Can you provide a compensation schedule for each line item detail to be performed in response to this RFP, including an estimated maximum amount?				
13					
	Can you include a minimum of three (3) references from clients? Include project description, contact names, position, and organization name and telephone number for each reference listed, and submit this with the proposal response.				
14					